

Senate State & Local Government
Committee Amendment #1

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AMENDMENT NO. _____

Signature of Sponsor

AMEND Senate Bill No. 3198*

House Bill No. 3214

by deleting all the language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 52, is amended by adding the following as a new, appropriately designated part:

Section 7-52-501. (a) Each municipality operating an electric plant described in Section 7-52-401 which is designated as a pilot system under the provisions of this act, has the power and is authorized, under the provisions of this act and on behalf of its municipality acting through the authorization of the board or supervisory body having responsibility for the municipal electric plant, to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, internet services, or any other like system, plant, or equipment within and/or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality. A municipality may only provide cable service, two-way video transmission, video programming, internet services or other like service through its board or supervisory body having responsibility for the municipality's electric plant. A municipality providing any of the services authorized by this section may not dispose of all or substantially all of the system, plant, and equipment used to provide such services except upon compliance with the procedures set forth in Section 7-52-132.

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(b) Each electric cooperative which is designated as a pilot system under the provisions of this act may with the authorization of its membership acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, or otherwise dispose of any system, plant, or equipment for the provision of, video programming, cable television, internet services, or any other like system, plant, or equipment within the boundaries of its service area. An electric cooperative may only provide cable service, two-way video transmission, video programming, internet services, or other like service after an affirmative vote of its membership authorizing its board of directors to provide such services. An electric cooperative providing any of the services authorized by this section may not dispose of all or substantially all of the system used to provide such service except upon compliance with the procedures in Section 65-25-213.

Section 7-52-502.

(a)(1) The Tennessee Municipal Electric Power Association shall recommend by August 1, 1998, to the Tennessee regulatory authority four (4) systems for designation as pilot systems.

(2) The Tennessee Electric Cooperative Association shall recommend by August 1, 1998, to the Tennessee regulatory authority two (2) systems for designation as pilot systems.

(3) If either association has not submitted its complete allocation of recommendations by August 1, 1998, to the authority, the other association has until

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October 1, 1998, to recommend a sufficient number until a total of six (6) systems have been initially recommended for designation as pilot systems. Provided, however, the authority shall initiate its evaluation on August 1, 1998, if any recommendation has been submitted.

(4) The associations shall strive for geographical diversity across the grand divisions of the state and for diversity with respect to the number of customers in recommending the systems to the authority.

(5) In making a recommendation, an association may recommend to the authority a joint venture involving a private provider of such services and either a municipal electric distributor or a rural electric cooperative.

(6) In making a recommendation, the associations may recommend to the authority a joint venture involving a municipal electric distributor and another municipal electric distributor or a rural electric cooperative; provided, however, each such joint participant shall count towards each association's total pilot recommendations; provided, further, a joint venture may not involve systems that serve a total of more than fifty thousand (50,000) electric customers on the effective date of this act. Nothing in this subdivision may be construed to prevent a municipal electric system from providing additional services to a greater number of customers as a single pilot project system or in conjunction with a private provider.

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(b)(1) The authority shall review each recommendation, and within thirty (30) days of the date of receipt of each recommendation, shall act either to designate the system as a pilot system or notify the association making the recommendation and the recommended system of the reasons for not making such designation. The authority shall designate a recommended system as a pilot system if the recommended system:

(A) Is either a municipal electric system operating under the authority of Title 7, Chapter 52 or an electric cooperative operating under the authority of Title 65, Chapter 25;

(B) Has been in existence and providing electric service to customers for more than ten (10) years; and

(C) Does not exceed the electric customer limitation in this section if the proposal is for a joint venture between two (2) or more systems.

(2) The authority shall notify the systems of their designations as pilot systems.

A system designated as a pilot system may pursue the offering of additional services provided in this act by submitting an application as outlined herein.

Section 7-52-503. (a) A system designated as a pilot system shall submit an application to the authority which includes a:

(1) Business plan, including a description of the quality and level of services to be provided, pro forma financial statements, a financing plan, marketing plan, rate structure, and other information defined by the authority;

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- (2) Description of how the system will meet other conditions of this act;
- (3) Information to be collected and provided to the authority to facilitate the authority's study of the impact of this act;
- (4) Sample of the public notice to be printed in newspapers of local circulation which includes key elements of plan and comments of the authority;
- (5) Documentation acceptable to the authority indicating that the system's governing body has taken action necessary to cooperate with the authority in its efforts to review the impact of the pilot system; such cooperation shall include, but not be limited to, providing the authority and its authorized agents access to information deemed relevant by the authority to the study of the impact of this act; and
- (6) Documentation that the system's governing board has reviewed and approved the application.
- (b) The authority shall review the application for completeness and reasonableness. If application is incomplete, the authority shall notify the applicant of the missing elements within thirty (30) days of submission by the applicant to the authority. The authority shall not continue to process an application until the application is complete. Once an application is complete, the authority shall, within ninety (90) days, provide to the applicant a written evaluation of the application. Such evaluation shall include an assessment of the

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reasonableness of the business plan and other such items as deemed appropriate by the authority. The authority's written evaluation shall summarize the authority's evaluation of the application and the public notice required in subsections (d) and (e) shall include the summary.

(c) Upon receipt of the authority's evaluation, the system governing board shall consider the authority's comments and make whatever changes to the business plan are deemed appropriate. After consideration of the authority's evaluation, the governing board shall consider whether to pursue the offering of additional services to customers. If a system declines to proceed with the offering of additional services, the association making the original designation may, within ninety (90) days, recommend another system to the authority for its evaluation.

(d)(1) If the system is a municipal electric and the board determines to proceed, it shall publish in a newspaper of general circulation within that area a notice of its intent to proceed with the offering of additional services. The notice shall include a general description of the business plan and a summary of the authority's comments on such plan. The notice shall also specify a date on which the local governing body or appropriate committee of such body shall conduct a public hearing on the application.

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(2) The local governing body or appropriate committee of such body shall conduct a public hearing on such application. No sooner than fourteen (14) days after such public hearing, the local governing body may consider the system's application to provide additional services. A system may provide additional services only after approval of the application by the local governing body.

(e)(1) If the system is an electric cooperative, and the board of directors determines to proceed, it shall publish in a newspaper of general circulation within that area a notice of its intent to proceed with the offering of additional services. The notice shall include a general description of the business plan and a summary of the authority's comments on such plan. The notice shall also specify a date on which the board of directors shall conduct a public hearing on the application.

(2) The board of directors shall conduct a public hearing on such application. No sooner than fourteen (14) days after such public hearing, the board of directors may consider the system's application to provide additional services. A system may provide additional services only after an affirmative vote of the membership of the cooperative.

Section 7-52-504. The authorization to provide additional services as permitted in this act shall terminate on June 30, 2002; provided, however, any system providing services to customers as a pilot system prior to June 30, 2002, may continue to offer

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such services under the authority of this part notwithstanding the termination date of the pilot project.

Section 7-52-505.

(a) No later than June 30, 2001, the authority shall commence a study of the pilot systems. The authority shall present its study to the appropriate standing committees of the general assembly no later than January 15, 2002. The goals of the study are to determine:

- (1) The impact on the systems of providing additional services,
- (2) The market impact of systems offering additional services, and
- (3) Recommendations on changes in the conditions under which systems may offer additional services if the general assembly permits other systems to offer additional services.

(b) The authority may, at its discretion, conduct other interim reviews of the pilot projects.

Section 7-52-506. (a) A municipality or cooperative providing any of the services authorized by this part shall fully allocate any costs associated with the services provided under this act to the rates for those services.

(b) A municipality or cooperative providing any of the services authorized by this part shall establish and charge rates that cover all costs related to the provision of any additional services.

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(c) A municipality or cooperative shall charge a pilot program the same pole attachment fee as it charges any other franchise holder.

Section 7-52-507. To the extent that it provides any of the services authorized by this part, a municipality or cooperative shall have all the powers, obligations, and authority granted entities providing similar services under applicable laws of the United States or the state of Tennessee.

Section 7-52-508. A municipality providing any of the services authorized by this part shall make tax equivalent payments with respect to such services in the manner established for electric systems under part 3 of this chapter. For purposes of the calculation of such tax equivalent payments only, the system, plant, and equipment used to provide such services shall be considered an electric plant, and the revenues received from such services shall be considered operating revenues.

Section 7-52-509. This part shall not apply to any existing telephone cooperative that has been providing cable service for not less than ten (10) years under the authority of the federal communications commission.

Section 7-52-510. Any municipality authorized by this part to provide any of the services described herein shall have the power and is hereby authorized to borrow money, contract debts and issue its bonds or notes to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or extension of a system or systems, or any part thereof, to provide any of such services,

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including the acquisition of land or rights in land and the acquisition and installation of all equipment necessarily incident to the provision of such services. Any bonds or notes authorized to be issued pursuant to this section shall be issued only in accordance with the procedures, requirements and limitations set forth in Title 7, Chapter 34, or Title 9, Chapter 21, as elected by the municipality issuing the bonds or notes. All provisions of Title 7, Chapter 34, or Title 9, Chapter 21, relating to the authorization, issuance and sale of bonds or notes, the use and application of revenues of the system or systems being financed, powers to secure such bonds and notes, covenants and remedies for the benefit of bond or note holders with respect to such bonds or notes, validity and tax exemption with respect to such bonds or notes, and powers to refund and refinance such bonds or notes shall apply to any bonds or notes authorized hereunder and the system or systems financed thereby with the same effect as if such system or systems were a "public works", if proceeding under Title 7, Chapter 34, or a "public works project" if proceeding under Title 9, Chapter 21.

Section 7-52-511. (a) The Tennessee regulatory authority may investigate any complaint of an unfair method of competition or unfair or deceptive act or practice, including but not limited to predatory pricing or an unfair practice under the rules of the federal communications commission in any area where services are offered under this part.

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(b) If the authority makes a finding that cause exists to believe a violation of law has occurred, the authority shall forward such findings to the federal communications commission and to the local franchising authority. The authority shall provide such assistance to the local franchising authority as may be reasonably requested.

Section 7-52-512. Notwithstanding the provisions of Title 7, Chapter 34, and Title 9, Chapter 21, to the contrary, a municipality may only provide the services authorized by this part upon being designated as a pilot project in accordance with the provisions of this part.

Section 7-52-513. This part supersedes any conflicting provisions of general law, private act, charter or metropolitan charter provisions.

SECTION 2. Tennessee Code Annotated, Title 65, Chapter 25, Part 2, is amended by adding the following new section:

The provisions of §§65-25-205, 65-25-227, and 65-25-228 shall not apply to any pilot project approved under the provisions of Title 7, Chapter 52, Part 5.

SECTION 3. Tennessee Code Annotated, Title 7, Chapter 52, Part 4 is hereby amended by adding the following as a new, appropriately designated section:

Section 7-52-408. Any municipality authorized by this part to provide any of the services described herein shall have the power and is hereby authorized to borrow money, contract debts and issue its bonds or notes to finance in whole or in part the cost of the acquisition, purchase, construction, reconstruction, improvement, betterment or

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extension of a system or systems, or any part thereof, to provide any of such services, including the acquisition of land or rights in land and the acquisition and installation of all equipment necessarily incident to the provision of such services. Any bonds or notes authorized to be issued pursuant to this section shall be issued only in accordance with the procedures, requirements and limitations set forth in Title 7, Chapter 34, or Title 9, Chapter 21, as elected by the municipality issuing the bonds or notes. All provisions of Title 7, Chapter 34, or Title 9, Chapter 21, relating to the authorization, issuance and sale of bonds or notes, the use and application of revenues of the system or systems being financed, powers to secure such bonds and notes, covenants and remedies for the benefit of bond or note holders with respect to such bonds or notes, validity and tax exemption with respect to such bonds or notes, and powers to refund and refinance such bonds or notes shall apply to any bonds or notes authorized hereunder and the system or systems financed thereby with the same effect as if such system or systems were a "public works", if proceeding under Title 7, Chapter 34, or a "public works project" if proceeding under Title 9, Chapter 21. The use and application of revenues authorized and permitted by Title 7, Chapter 34, and Title 9, Chapter 21, shall be qualified by the powers given by Section 7-52-402.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the

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act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. This act shall take effect upon becoming a law, the public welfare requiring it.

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